

1       were paid to the end.

2               I personally do not know where the end dates came  
3       from because my staff did these. I'd have -- the person who  
4       would probably know the best on the meaning of the word "end  
5       date," because it has nothing else to -- it itself does not  
6       stop the billing on a system. The end date is just a field,  
7       a number that can be entered.

8               I don't know if it's the end of the paid billing,  
9       the end of service, the turn off date. It may be different  
10      between accounts. I can't tell you for certain the meaning  
11      of it. I'd have to ask Barb Ashauer. She'd be the one who  
12      would know best.

13              Q       Okay. Let me ask you then. With respect to the  
14      term "start date," do you have an understanding as to what  
15      that date means?

16              A       That would be the approximate date they either  
17      started service or we started billing. It's not uncommon  
18      that we'll actually turn on codes for a system and give the  
19      customer a few free days even up to three weeks or a month  
20      because we do most of our billing on a quarterly basis on  
21      calendar quarters.

22              For example, here with Great American the start  
23      date shows 4-1-94. That would be the start of the second  
24      calendar quarter. My offhand answer to that, sitting here,  
25      would be that he didn't start exactly on April 1. He may

1 have started on March 15. He may have started on March 2.  
2 It's entirely possible we didn't bill him for a period of  
3 time before that start date. That would be the start date  
4 effective for billing, which may not necessarily coincide  
5 with a start date for actual service.

6 Again, you have to ask Barb Ashauer, who actually  
7 sets up these accounts and handles these, because I haven't  
8 handled these accounts myself for data entry for many years.

9 JUDGE CHACHKIN: All right. Why do we not wait  
10 and ask these questions of Ms. Ashauer when she comes here  
11 since she is in a better position to answer these questions  
12 about particular accounts?

13 THE WITNESS: She would know how the dates are  
14 used, but she may not know a particular account.

15 That information, though, the actual physical  
16 start date, most likely would be in the paper files which  
17 you were given as part of the 30-something-odd thousand  
18 documents we turned over.

19 MR. SCHAUBLE: Your Honor, we have reviewed those  
20 documents.

21 JUDGE CHACHKIN: If the witness is familiar with a  
22 particular account then obviously he can answer it. If he's  
23 not, we have what we have. Maybe Ms. Ashauer can answer it.  
24 Maybe she cannot.

25 MR. SCHAUBLE: Your Honor, I am going to be

1 handing the witness the next volume.

2 JUDGE CHACHKIN: All right.

3 MR. SHAINIS: What volume is that?

4 MR. SCHAUBLE: 181 to --

5 BY MR. SCHAUBLE:

6 Q Mr. Kay, please direct your attention to WTB  
7 Exhibit 181.

8 MR. KELLER: What volume are you in?

9 JUDGE CHACHKIN: Exhibit 181 you said?

10 MR. SCHAUBLE: 181, Your Honor.

11 JUDGE CHACHKIN: That is the same Volume 4 we  
12 still have, right? 181. All right.

13 BY MR. SCHAUBLE:

14 Q Mr. Kay, my question is -- is it correct that  
15 WIK611 and WIL733 represent duplicate authorizations for the  
16 same operation?

17 A The same piece of hardware. The same repeater.  
18 Yes, I believe that's the case.

19 This is another one of those stations that's going  
20 away on that application, John.

21 Q Mr. Kay, please move forward to WTB Exhibit 206.

22 JUDGE CHACHKIN: Now we are moving to Volume 5?

23 MR. SCHAUBLE: Your Honor, I believe the volumes  
24 on some of these, because of the size of the notebooks that  
25 were available to us, were --

1 MR. SHAINIS: What exhibit are you on now?

2 MR. SCHAUBLE: 206.

3 BY MR. SCHAUBLE:

4 Q My initial question is -- is it correct that  
5 WIK983 and WIL469 represent duplicate authorization for the  
6 same piece of hardware?

7 A Yes. It is also a license that's going away.

8 MR. SCHAUBLE: Your Honor, in light of my  
9 admonition, I am trying to skip through questions and try  
10 and move along here.

11 JUDGE CHACHKIN: All right. Good.

12 BY MR. SCHAUBLE:

13 Q Mr. Kay, please turn to Exhibit 236.

14 MR. SHAINIS: Your Honor, let me just make a  
15 continuing objection. On Exhibit 206, Mr. Schauble just  
16 asked, essentially, if the exhibit was correct.

17 JUDGE CHACHKIN: Well, let's move on. We are now  
18 on 236. 236. All right. What is your question?

19 MR. SCHAUBLE: Your Honor, I was asking a question  
20 about the nature of the authorization.

21 JUDGE CHACHKIN: I thought that was the last  
22 question, and the witness said it is part of the  
23 applications which have not been acted on.

24 All right. 236.

25

1 BY MR. SCHAUBLE:

2 Q WIL522. Do you have that before you, Mr. Kay?

3 A Yes.

4 Q Do you see the listing for Auto Supply Company  
5 Store No. 2?

6 A Yes.

7 Q Okay. Turn to page 1 of Exhibit 237. Do you see  
8 first the customer print screen for Auto Supply Company does  
9 not have any cite information contained there?

10 A Yes. It looks like this one slipped through.  
11 When we did the customer print screens, we discovered that  
12 if it was done too rapidly, sometimes all the information  
13 wouldn't print. Some of them had to be redone. It looks  
14 like this one slipped through.

15 Q Okay.

16 A Auto Supply. He's on that channel. They have, I  
17 believe, two stores. To the best of my recollection,  
18 5082125 is one of the frequencies for one of the stores.  
19 The reason it doesn't appear on the print screen is  
20 basically a computer error.

21 Q Okay. Turn to page 3 of the exhibit.

22 A Yes.

23 Q Do you see the customer print screen for Kendall  
24 Sign Company, Inc.?

25 A Yes.

1 Q And the end date 9-30-93?

2 A That's what it says.

3 Q Okay. Do you recall whether Kendall Sign Company,  
4 Inc., remained a customer of yours after 9-30-93?

5 A I don't know exactly when they cancelled. I do  
6 know they're not a paying customer and haven't been for some  
7 time.

8 Q Okay.

9 A As best I recall, they still have the radios. I  
10 don't know if they use their radios on talkaround or not.

11 Q Turning to page 6 of the exhibit --

12 A Which one?

13 Q The same exhibit, 237. Nolte and Associates. Do  
14 you see the end date, 7-31-94?

15 A Yes.

16 Q Okay. Would it be correct that they ceased to be  
17 a paying customer on or around 7-31-94?

18 A Somewhere in that area.

19 Q Okay. Let me ask you this. Did they cease to be  
20 a customer, paying or non-paying, of yours on or around --

21 A I don't know if they continued to use the  
22 frequency or not, but they would have been turned off the  
23 repeater service.

24 For your information, this is another channel that  
25 goes under the major license. These licenses are going

1 away.

2 JUDGE CHACHKIN: Are you moving to Volume 6 now?

3 MR. SCHAUBLE: I believe so, Your Honor.

4 BY MR. SCHAUBLE:

5 Q Mr. Kay, please turn to Exhibit 262.

6 A Yes.

7 Q Is it correct that in further response to  
8 Interrogatory 4, the only customer you listed as being --

9 JUDGE CHACHKIN: We can skip the prelude. You can  
10 just point ask your question without all this additional  
11 stuff.

12 MR. SCHAUBLE: Very well, Your Honor.

13 BY MR. SCHAUBLE:

14 Q Turn to Exhibit 263, Mr. Kay.

15 A Yes.

16 Q Do you see the end date for Burns International  
17 Security is 12-31-93?

18 A Yes.

19 Q Did they remain a customer of yours on or after  
20 that date?

21 A I don't know. You are aware, John, that this is  
22 the itinerant channel. Frequency 464.500 is known as the  
23 itinerant channel for temporary operations only, at reduced  
24 power levels. It's in your rule book.

25 It's used very heavily for rentals and demos and

1 short-term uses such as construction sites and security  
2 jobs.

3 Q Would it be correct that after Burns went off the  
4 channel, the use of this channel would be for rentals, demos  
5 and itinerant use?

6 A Well, for Burns they came to us under another  
7 name. New Horizons Security was the fellow's name. They  
8 were already on this channel from some other radio shop, but  
9 they weren't satisfied so we put up a couple repeaters for  
10 them under their license, and then we put a private carrier  
11 on there so that we could supply service on this channel not  
12 only to them, but to others.

13 We used it for rentals, demos and what have you  
14 and supplied service to them off a couple mountaintops off  
15 temporary repeaters. The temporary repeaters just stayed up  
16 quite awhile is all.

17 It's an itinerant channel that has no loading  
18 regulations and is used basically as -- anybody who needs to  
19 use it can use it any time. Anybody who wants a license for  
20 it can get a license for it. It's a total free-for-all  
21 channel. I'm sure you recognize the frequency. There's two  
22 of them, 464.500 and 464 I believe the second is 550, but  
23 they're used in that fashion.

24 Q Let me ask you just a few general questions. It  
25 is correct, is it not, that under certain circumstances your



1 loading on your existing stations would impact your ability  
2 to apply for additional stations, correct?

3 A Which band are we talking about, or are you  
4 talking in a very, very general sense?

5 Q In a very, very general sense.

6 A It could, or it may not. In a general sense, it  
7 has to be looked at, but you have to take a look at the  
8 individual situation to know whether it does or doesn't,  
9 John.

10 Q Okay.

11 A The vast majority of my applications didn't  
12 require a showing of loading or a checking of loading. I  
13 tended to avoid it because it was such a massive job,  
14 especially when there were ways of filing applications that  
15 didn't require a showing of loading.

16 Q Were there times where you filed applications that  
17 did require a showing of loading?

18 A There were a few. I don't recall. I recall one I  
19 mentioned yesterday in 1993. They required me to show  
20 loading, and I did.

21 Q With respect to that application in 1993 when you  
22 were required to show loading, what process did you take in  
23 order to check your loading?

24 A It was a job. I checked both the Commission's  
25 databases by downloading and writing information down from

1     ISI. It was an 800 megahertz application, so I dealt with  
2     what stations were within 40 miles of it that I needed to  
3     check. I downloaded the information on who was on each  
4     frequency. If they were SMRs, who and how many mobiles  
5     their users had, and if the SMR had converted and added the  
6     mobiles and controls to his own license I would have checked  
7     that.

8             I took my customers that I had on my stations,  
9     compiled it with the existing loading on existing co-channel  
10    stations because each frequency had to be looked at  
11    separately.

12            Just loading on my station is far from the whole  
13    picture. I had to check everybody within 70 miles of  
14    existing locations of my stations that were within 40 miles  
15    of the application point, so I conceivably would have to  
16    look at stations that would be almost 110 miles away from my  
17    designated application point for any application I placed  
18    in. It takes a lot of work when you have to do that.

19           Q     Okay. I understand that. There were times you  
20    would also be required to check loading on your other  
21    stations as part of this process, correct?

22           A     Well, I checked loading. I just explained that to  
23    you. I had to check the loading of my station. Loading,  
24    John, is not necessarily on my stations. It's the loading  
25    on a frequency, which means every frequency I have licensed

1 to me.

2 If I have Frequency X licensed to me, if I need to  
3 determine whether my station is loaded or not loaded I don't  
4 look at just my loading. I look at all stations on  
5 Frequency X for a 70 mile radius of my station.

6 Q Mr. Kay, I understand. I am not disagreeing with  
7 you.

8 A It just makes sense.

9 Q I am saying part of that process would include  
10 looking at loading on your stations, correct?

11 JUDGE CHACHKIN: Which are using that frequency.  
12 The witness has already said that.

13 THE WITNESS: Well, yes and no. I'll give you  
14 another hypothetical. All right.

15 In a hypothetical situation, I want to make an  
16 application on Frequency A. I need to do a loading check  
17 because Frequency A is not loaded, and I'm not proposing  
18 loading with my application, which means I cannot have a  
19 license within 40 miles of where I'm proposing Station A be  
20 on Frequency A, so I have to look at the frequencies of  
21 every station I have that's within 40 miles of that.

22 When I take a look at Frequency X, for example, a  
23 station that is within 40 miles of my proposed point, if I  
24 take a look at it and I say gee, 'Mega Corp. is already on  
25 there licensed at 72 mobiles,' I don't need to go any

1 further. Mega Corp. already has 72 mobiles on it. Whether  
2 my station has one mobile, two mobiles or 200 mobiles is  
3 absolutely irrelevant.

4 I take a look at the co-channels first because it  
5 makes it easier for me. I take the easy path when I can.  
6 If I take a look at a frequency and one of my competitors is  
7 licensed for greater than 70 mobiles or a combination of two  
8 or three of my competitors or self-licensed companies like  
9 Federal Express, for example, are already licensed and the  
10 cumulative of these is greater than 72, I don't have to look  
11 at my own or do any work with them, so why would I?

12 It's easier to look at my competitors first that  
13 are already sharing the channel with me. Does that make  
14 sense?

15 BY MR. SCHAUBLE:

16 Q Okay. Now, in those instances, recognizing that  
17 in not every instance it would be necessary, but in those  
18 instances where it was necessary to check the loading of  
19 your stations, as opposed to other people's stations, what  
20 records would you check in order to check your own loading?

21 A Okay. Hypothetical. I've applied for Station A  
22 at a fixed point. I have a Station B 30 miles away from it.  
23 I have to check the frequency of Station B to see that it's  
24 loaded. What I do is go on there and look to see who else  
25 is on there.

1           Okay. Say Motorola is on there, and its loading  
2   is say 55 units. For the channel to be fully-loaded, I only  
3   have to have 15 units on my station. Fine. I tap on the  
4   computer and say yes, I've got so and so's courier service  
5   on there or so and so's ambulance service or so and so's  
6   people transport service on there, and they've got easily 15  
7   mobiles. I go no further.

8           Q    Okay. So is it correct that it would be possible  
9   for you to search your database by frequency and site in  
10   order to obtain the information you need?

11          A    What I would do is do the frequency look up to see  
12   who's on there, and then I could check individual billings.  
13   As soon as I make the necessary number to cross the 70 line  
14   plus whoever else was on there, because the FCC always  
15   viewed their database, in effect, is the holy grail of  
16   loading. Whether it was right or wrong or somewhere in  
17   between, we started with it.

18                When I had to do loading checks, the first thing I  
19   do is dial in on ISI, the Commission's on-line contractor  
20   for database, and would look up what I need to there. It's  
21   a matter of where do I need to start. The easiest is to  
22   find out what I have to examine of my stations and then look  
23   at the frequencies that those are on before looking and  
24   counting my own loading was actually my last job.

25                Does this help you?

1           Q     My question, Mr. Kay, is limited to what records  
2 of yours do you check when it is necessary to check your --

3           A     I would check my customer records as a rule.

4           Q     Okay.

5           A     Either computerized or if I need to go back and  
6 look at the hard copy files. Only to the extent that what I  
7 already had or knew that I had or knew that I had rentals  
8 and demos in my own warehouse, I didn't have to go any  
9 further than that.

10                   If I saw a channel was already loaded that I was  
11 sharing and I had to check a loading on a channel, if the  
12 existing loading was, let's use an example, 55 on it with  
13 other stations, often times I know off the top of my head  
14 well, this frequency already had a customer that had X  
15 amount of units. I would know off the top of my head what I  
16 had left. I'd say yes, this one is already covered. I  
17 wouldn't need to go look it up in the database. I knew what  
18 was there.

19                   JUDGE CHACHKIN: What volume are we going to now?

20                   MR. SCHAUBLE: Exhibit 290, Your Honor.

21                   Your Honor, can we take our morning recess at this  
22 time in order to confer with Mr. Knowles-Kellett?

23                   JUDGE CHACHKIN: All right. We will take a five  
24 minute recess.

25                   (Whereupon, a short recess was taken.)

1 MR. KNOWLES-KELLETT: I have reviewed the  
2 application that they were talking about, and we are not  
3 going to put in in evidence. We are going to keep it as --

4 JUDGE CHACHKIN: What application?

5 MR. KNOWLES-KELLETT: The one that offers to trunk  
6 an LPR system after our 308(b) investigation and reduce its  
7 mobile count. It does not offer to give up exclusivity and  
8 so it does not meet the requirements of 9135(a), so it has  
9 no bearing on our case.

10 If they want to offer it as an affirmative defense  
11 and say that it is somewhat different, that it did meet the  
12 regulatory requirements, that is their business, but we are  
13 not going to put it in.

14 JUDGE CHACHKIN: What issue are we talking about?

15 MR. KNOWLES-KELLETT: The channel sharing.

16 JUDGE CHACHKIN: All right.

17 MR. KELLER: That is fine, Your Honor.

18 JUDGE CHACHKIN: All right.

19 MR. KELLER: We will deal with it in the normal  
20 course.

21 JUDGE CHACHKIN: Let's proceed, Mr. Schauble.

22 MR. SHAINIS: Your Honor, sitting in the room is  
23 Mr. Eisen in the back, who is an attorney who I have been  
24 advised will be representing Mr. Sobel while Mr. Sobel is a  
25 witness. I just want to advise Your Honor and the other

1 parties of that.

2 I believe Mr. Eisen is aware of the sequestration,  
3 but I do not know if there is any objection to him sitting  
4 here.

5 JUDGE CHACHKIN: Do you have any problem with Mr.  
6 Eisen sitting in?

7 MR. SCHAUBLE: I have no problem.

8 JUDGE CHACHKIN: Mr. Eisen is not a witness.

9 MR. SCHAUBLE: I have no problem with that, Your  
10 Honor. I assume Mr. Eisen is aware of the sequestration  
11 Order Your Honor has entered.

12 MR. KELLER: We will make sure to fully advise him  
13 of it, Your Honor.

14 JUDGE CHACHKIN: All right. Fine. Let's proceed.

15 BY MR. SCHAUBLE:

16 Q Mr. Kay, please turn to WTB Exhibit 290 and turn  
17 to page 22 of the exhibit. Is that your signature on the  
18 affidavit?

19 A Yes.

20 MR. KELLER: Counsel, is this the one you were  
21 asking me about?

22 MR. SCHAUBLE: Let me ask a couple more questions  
23 and then --

24 MR. KELLER: Okay.

25



1 BY MR. SCHAUBLE:

2 Q Do you recognize this as your amended responses to  
3 the Wireless Telecommunications Bureau's first set of  
4 interrogatories?

5 A You had me look at the affidavit. Do you want me  
6 to look at something else now? I believe that it is.  
7 That's what it says it is.

8 Q Turn to page 3 of the exhibit.

9 A Okay.

10 Q The first call sign, KJV843. Do you see under the  
11 listing California Area, do you see the notation Signal  
12 Hill, "Not in operation?"

13 A Yes, I see it.

14 Q Does that mean that at that particular site that  
15 station was not constructed?

16 A It says "not in operation." I would -- that's  
17 what it says. It means there's no station there. It's not  
18 in operation.

19 If that means -- in some cases I'm sure that means  
20 it was not constructed. In other cases it may have been  
21 constructed and then deconstructed.

22 MR. SCHAUBLE: Your Honor, at this time I ask  
23 counsel for Kay to stipulate that Exhibit 290 with respect  
24 to each site listed in here which there is a notation "Not  
25 in operation" that the site is either not constructed, or it

1 was permanently discontinued within the meaning of the  
2 Commission's rule, because it was not in operation for a  
3 period of one year or more.

4 MR. KELLER: I do not know that we can stipulate  
5 to that. I can certainly stipulate that it was not in  
6 operation as of May 11, 1995, but that is what this  
7 affidavit swears to already.

8 I need to confer with the witness before I can  
9 stipulate beyond that. May I confer with my client?

10 JUDGE CHACHKIN: Yes.

11 (Pause.)

12 MR. KELLER: We will certainly take that request  
13 for stipulation under advisement, but I will need to confer  
14 with my client. Maybe we will do that over the lunch break,  
15 and we can let you know right after lunch.

16 We will certainly stipulate that the affidavit  
17 says what the affidavit in the exhibit says. As far as you  
18 are asking for a stipulation that has a legal consequence;  
19 that is, that it was permanently discontinued within the  
20 meaning of the rules, we may well be willing to stipulate to  
21 that, but I am going to want to go over each of these with  
22 my client to make sure that none of them are something that  
23 were temporarily discontinued.

24 MR. KNOWLES-KELLETT: I think we may be able to  
25 short circuit this, Your Honor. There is an exhibit. The

1 following exhibit, 291, is a report of the Commission's  
2 inspection.

3 For every one where Mr. Kay told the Commission  
4 inspectors it is not constructed there and was reported not  
5 in operation, can we stipulate that they are not constructed  
6 and were not constructed during that time?

7 MR. KELLER: What was the date of this?

8 MR. KNOWLES-KELLETT: That was a year-and-a-half  
9 later.

10 MR. KELLER: Then what do you need the stipulation  
11 for? The two documents speak for themselves. Are you  
12 asking us to stipulate that they remained unconstructed  
13 during the two periods?

14 MR. KNOWLES-KELLETT: I think that that is going  
15 to short circuit it, you know.

16 MR. KELLER: Fine. Let us review it over the  
17 lunch break, and we will let you know after lunch.

18 MR. KNOWLES-KELLETT: Well, I do not know. We are  
19 going to go ahead and ask the questions.

20 MR. KELLER: Let me check and see. We can either  
21 take time to review it now if we could take a 15 minute --

22 JUDGE CHACHKIN: No. We are going to do it over  
23 the lunch break. I am not going to permit any questions  
24 until the witness has had a chance to review it, and then if  
25 it is necessary, based on what the witness says, whether you

1 can stipulate or not, then you can ask your questions.

2 Let's go on to another area right now. There is a  
3 likelihood you may not need any questions in this area.

4 MR. KNOWLES-KELLETT: All right. Could we go off  
5 the record for just a minute?

6 JUDGE CHACHKIN: Yes. We will go off the record.

7 (Discussion held off the record.)

8 JUDGE CHACHKIN: What is the next volume?

9 MR. SCHAUBLE: 291 to 328, Your Honor.

10 MR. KELLER: Now that you have all your exhibits  
11 out and the witness has reviewed it, state again what you  
12 want us to stipulate. I think we may be able to do a --

13 JUDGE CHACHKIN: That those stations were not  
14 constructed during the investigation.

15 MR. KELLER: What we will stipulate is for the  
16 limited purposes of this proceeding, the sites listed as not  
17 in operation can be deemed either to have been not  
18 constructed by the construction deadline and/or to have been  
19 permanently discontinued as of that date within the meaning  
20 of the rules.

21 JUDGE CHACHKIN: Is that satisfactory?

22 MR. SCHAUBLE: That is satisfactory to us, Your  
23 Honor.

24 JUDGE CHACHKIN: The stipulation is accepted. It  
25 is received.

1 MR. KELLER: Just so the record is clear, I was  
2 referring to the items marked "Not in operation," to  
3 specific locations marked "Not in operation" in Bureau  
4 Exhibit 290.

5 JUDGE CHACHKIN: 290?

6 MR. KELLER: Yes.

7 JUDGE CHACHKIN: All right. What volume are we  
8 dealing with now?

9 MR. KNOWLES-KELLETT: We are going to be dealing  
10 with 290 for just one moment.

11 JUDGE CHACHKIN: Okay. All right.

12 MR. SCHAUBLE: Mr. Kay, please turn your attention  
13 to WTB Exhibit 290.

14 What we are dealing with here, Your Honor, is  
15 there are just a few instances where there is some  
16 difference between what is in Exhibit 290 and 291, which is  
17 the CID inspection report.

18 JUDGE CHACHKIN: All right.

19 BY MR. SCHAUBLE:

20 Q Mr. Kay, turn to page 12 of Exhibit 290 and  
21 specifically under 78, WIK896.

22 A Okay.

23 Q Do you see for the Upland site there was no Date  
24 Constructed listed?

25 A Yes.

1 Q Okay. Do you recall attending various inspections  
2 of your facilities in 1997?

3 A Yes.

4 Q Those facilities were conducted by the  
5 Commission's Compliance and Information Bureau?

6 A Yes.

7 Q Is it correct that Agent Paul Oei was present at  
8 those inspections?

9 A He was one of three.

10 Q Do you recall telling Paul Oei in the course of  
11 those inspections that WIK896 at Upland was not constructed?

12 A The station was not constructed on that day. It  
13 was not physically present there on the date of inspection.  
14 I showed Paul an isolator and combiner port that were  
15 labeled with those frequencies because the repeater was --  
16 it had been removed for service by one of my service guys.  
17 It was subsequently put back up there within a couple weeks  
18 of the inspection.

19 That station is there. It was down at the time of  
20 the inspection for service, but I showed him where there was  
21 coupling equipment and transmitter combining equipment for  
22 that frequency. He had to write it up, though, as not being  
23 present on the day he inspected it because it was not  
24 physically there.

25 Out of 350 or 400 repeaters that they inspected, I

1 think they found three of them that were not present on the  
2 day of inspection because they were being serviced. We had  
3 multiple repeaters on 4711875, including one at Corona,  
4 which is Sierra Peak. That serves almost the identical  
5 service area of the Upland site, so it was simple enough for  
6 us to still have service out there from the other one.

7 Does that answer your question on that one?

8 Q Do you know what date the Upland site for WIK896  
9 was constructed?

10 A It was within eight months of the original grant  
11 date. I don't think I ever found -- actually, I think it  
12 was constructed the date of grant, but I -- before I say  
13 something here, I'm not sure. It was up there a long, long  
14 time.

15 Q Okay.

16 A I'd have to take a look at old licensing records  
17 to see how I came with that particular license. It says New  
18 here, but new -- a new grant does not necessarily mean it's  
19 new stations because when we split licenses, oftentimes an  
20 existing call site would go to certain stations on a  
21 frequency, and a new call site would be assigned to existing  
22 hardware that was already constructed.

23 It's entirely possible that it was already there  
24 when the license was granted 6-11-91. I've had that channel  
25 a long -- that channel I've worked with a long time.

1 Q Okay, Mr. Kay. Please turn to page 17 of Exhibit  
2 290.

3 A Okay.

4 Q Mr. Kay, do you see No. 120, the listing for  
5 WNWB268?

6 A Yes.

7 Q Including the listing for the site at Montrose?

8 A Yes.

9 Q Now, Montrose would be Mount Lukens, correct?

10 A That's correct.

11 Q Okay. Now, when Paul Oei conducted his inspection  
12 of this station, was that station in operation at that time?

13 A Yes, to the best of my recollection it was.

14 Q Okay.

15 A Is there something in this report that says  
16 otherwise? I don't think so.

17 MR. KNOWLES-KELLETT: The report indicates. You  
18 have it. Turn to 291. His report indicates you told him it  
19 was not constructed.

20 MR. KELLER: What page?

21 MR. KNOWLES-KELLETT: Page 14.

22 MR. KELLER: That is WNWB268?

23 MR. SCHAUBLE: Yes, WNWB268.

24 THE WITNESS: What page of his report?

25 MR. KNOWLES-KELLETT: Fourteen.



1 MR. KELLER: Is that Footnote 5?

2 MR. KNOWLES-KELLETT: It is a six.

3 MR. KELLER: That is a six? Is there a better  
4 copy of this?

5 MR. KNOWLES-KELLETT: I think you guys might have  
6 been provided the original.

7 MR. KELLER: I will have to check the deposition  
8 file. I think you are right.

9 JUDGE CHACHKIN: Is the reporter getting this?

10 THE REPORTER: Barely.

11 JUDGE CHACHKIN: Please keep your voices up.

12 MR. KELLER: I just wanted to confirm that the  
13 reference on the exhibit is to Footnote 6.

14 THE WITNESS: I think that is supposed to be a  
15 five, folks. Where is the footnote list here? Mine is so  
16 blurry you can't tell.

17 MR. KELLER: I cannot tell if it is a five or a  
18 six. It looks more like a five to me, counsel.

19 MR. KNOWLES-KELLETT: Okay. We will check it and  
20 get back to you.

21 THE WITNESS: I think that has to be a five  
22 because I'll tell you for a fact that box has been up there  
23 an awfully long time. I believe -- I would say with 99.9  
24 percent certainty that that box was there on the inspection.

25 I think the number is a five that's in the

1 footnote, not a six.

2 MR. KNOWLES-KELLETT: Okay.

3 THE WITNESS: That was a primary station for that  
4 license. That box is there today. If you want to fly to  
5 California, it's up there. If you want to send the boys up  
6 to take a look at it, they'll find it. It's there.

7 BY MR. SCHAUBLE:

8 Q Turn to page 18 of Exhibit 290, Mr. Kay. I am  
9 sorry. 290, the answers to interrogatories.

10 A What page was that, 17 of this report?

11 Q 14.

12 A 14? Sure, guys. It had to be there because he's  
13 got the model, Unit N, MRS804. Then he's got a serial  
14 number for it.

15 He inspected it. He pulled the serial number off  
16 of it. If it wasn't there, he couldn't have pulled the  
17 serial number. I'm 100 percent certain he was there.

18 MR. KNOWLES-KELLETT: We are satisfied.

19 THE WITNESS: Okay. Simple. Next?

20 BY MR. SCHAUBLE:

21 Q Mr. Kay, please turn to page 18 of Exhibit 290.

22 A Okay.

23 Q Do you see No. 131, WNXF7538?

24 A Yes.

25 Q These sites would be at Montrose and Running

1 Springs?

2 A Yes.

3 Q The site at Montrose, was a station ever  
4 constructed?

5 A I don't recall ever having that one there. It  
6 wasn't there at this time, for sure.

7 Well, let me see. Yes, originally it was. I'm  
8 pretty sure it was at Lukens initially, and then it was  
9 relocated to Santiago, but that was well before this.

10 Q Okay.

11 A It was at Lukens at one time. I'm going by sheer  
12 recollection. That would have been near its initial grant.  
13 It was at Lukens originally, and then it was moved to  
14 Santiago.

15 Q Okay.

16 A It was well before this 1995 timeframe.

17 Q Okay. Was the site at Running Springs ever  
18 constructed?

19 A Not to my recollection.

20 Q Okay.

21 A So for the purposes of this, looking at the  
22 license as it existed in 1995, you could put "Not in  
23 operation" for Montrose and Running Springs.

24 Q Okay.

25 A In 1995, it was not there because those were

1 secondary sites and non-usage, but originally it was  
2 primaried at Lukens, if I recall correctly.

3 Q Mr. Kay, please turn your attention to WTB Exhibit  
4 326. Do you have it before you, Mr. Kay?

5 A Yes.

6 Q Do you recognize this as an agreement between  
7 yourself and Jerry Gales?

8 A Yes.

9 Q Okay. Is it correct that the date of this written  
10 agreement was November 2, 1994?

11 A Yes.

12 Q How long have you known Mr. Gales?

13 MR. SHAINIS: Objection on relevancy.

14 MR. SCHAUBLE: Background, Your Honor.

15 JUDGE CHACHKIN: I will permit the question.

16 THE WITNESS: Sometime in the 1980s.

17 BY MR. SCHAUBLE:

18 Q This agreement provides that you will manage a  
19 station licensed to Mr. Gales, correct?

20 A That's what it says on its face.

21 Q Okay. Prior to November 2, 1994, did you have an  
22 oral agreement under which you would manage a station  
23 licensed to Mr. Gales?

24 A Yes.

25 Q Okay. When did that oral agreement come into

1 existence?

2 A Somewhere around the time his license was granted,  
3 or shortly thereafter.

4 Q Okay.

5 A I don't remember beyond that. I'd have to look up  
6 and see when they granted him his license. It would have  
7 been shortly after that.

8 Q Okay. What were the terms of this oral agreement  
9 you had with Mr. Gales?

10 A Basically that we would construct it and market it  
11 and put customers on it.

12 Q Okay. Did you perform any required system  
13 maintenance for Mr. Gales' station?

14 A Yes.

15 Q Okay. In return for that, were you entitled to  
16 certain revenues earned in connection with the operation of  
17 that station?

18 A We would get the first dollars from it to cover  
19 our cost of the equipment and the maintenance and the  
20 billing. I think the dollars were like \$500 or \$600 in the  
21 agreement.

22 Q Okay. Let me direct your attention to page 4 of  
23 Exhibit 326, Mr. Kay.

24 Is it correct that under the written agreement you  
25 were entitled to receive the first \$600 per month of gross

1 revenues?

2 A According to this written agreement, that's  
3 correct.

4 Q Okay. Was it the same amount under the oral  
5 agreement, or was it a different amount?

6 A I don't remember.

7 Q Now, did you have any role in preparing the  
8 application that led to the issuance of the authorization  
9 for WFPF295?

10 MR. SHAINIS: Objection as to what you mean by the  
11 term "role." It is pretty broad.

12 MR. SCHAUBLE: As to --

13 JUDGE CHACKIN: What, if anything, did you do in  
14 connection with the application?

15 THE WITNESS: I believe I prepared it, typed it  
16 up.

17 BY MR. SCHAUBLE:

18 Q Did you select the frequency that would be applied  
19 for in the application?

20 A I would have been involved in that, but I don't  
21 know that I was solely responsible.

22 Q Okay. Would you have been responsible for finding  
23 a frequency to apply for?

24 A I very probably assisted. I may have recommended  
25 it. The final determination would, of course, be Jerry's

1 when he signed the application for it.

2 Q Do you recall the circumstances under which how it  
3 came to happen that you prepared this application?

4 A Jerry Gales has held SMR licenses before I ever  
5 knew where Jerry Gales was. He held a trunk SMR system at  
6 Oat Mountain. He held another 800 conventional station,  
7 which I bought off of him. He's been involved in radio for  
8 years.

9 Q Okay.

10 A I prepared an application for another station for  
11 him. I don't remember the conversations. It was years ago.

12 Q Okay. Do you recall the circumstances under which  
13 you entered into an oral management agreement with Mr.  
14 Gales?

15 A Jerry's not that physically well to be going up on  
16 mountaintops and dealing with repeaters, so it made common  
17 sense for my staff -- for me to have people handle that  
18 because I had the resources readily available.

19 Q Let me ask you. Is this management agreement  
20 still in effect with Mr. Gales?

21 A As of this day, yes.

22 Q Okay. Pursuant to the agreement, has Mr. Gales  
23 received any revenue from this station?

24 A I don't believe so.

25 Q Pursuant to the oral agreement, did Mr. Gales ever

1 receive any revenues from the station?

2 A I don't believe he received any cash monies, if  
3 that's what you're asking. I gave Jerry other  
4 compensations.

5 JUDGE CHACHKIN: What other compensations?

6 THE WITNESS: Mr. Gales used to have a shop over  
7 in Van Nuys an hour or so from where mine was, but had to  
8 leave it.

9 I gave him free office space at my offices to run  
10 his pager company, which he calls Metro Comm, that he has  
11 used for years. He had use of our telephones, use of a lot  
12 of our facilities at our offices at no charge. I never  
13 charged him a dime for any of it.

14 JUDGE CHACHKIN: Okay.

15 BY MR. SCHAUBLE:

16 Q During what time period did you provide office  
17 space to Mr. Gales?

18 A Several years. I moved into my offices in Van  
19 Nuys in mid 1990. Let me think. When did Jerry move in?  
20 Jerry I think moved in within the first year or so, and he  
21 relocated out of there I think in 1996 maybe. He was over  
22 at our place I think four or five years. I didn't keep any  
23 record. I was giving it to the man.

24 Q Okay. Is it correct for this station you provided  
25 the equipment needed to construct the station?



1           A     Yes.

2           JUDGE CHACHKIN: Did he lease the equipment from  
3     you? How was it treated, the equipment that you used on his  
4     behalf?

5           THE WITNESS: It was part of my agreement with him  
6     that I provide the equipment, installation, maintenance and  
7     marketing of the station, so it was hardware that I had.

8           JUDGE CHACHKIN: Now, if he decides to terminate  
9     his license, what would happen to the equipment?

10          THE WITNESS: We would take it down. I'll flip a  
11     couple switches, put it on another frequency and use it  
12     somewhere else eventually. It would go back in our  
13     warehouse stockpile and be recycled.

14          JUDGE CHACHKIN: So it would be your equipment?

15          THE WITNESS: Yes. He didn't own the hardware.  
16     We'd recycle it.

17          JUDGE CHACHKIN: All right. Okay.

18          BY MR. SCHAUBLE:

19          Q     During the term of this management agreement, did  
20     Mr. Gales have any role in maintaining the station?

21          A     Well, do you mean like hands on repairing it?

22          Q     I will ask that question initially.

23          A     No. As I told you, Jerry had a medical condition  
24     which precluded him from doing that type of work.

25          Q     Okay. Did he have any role in supervising or

1 assigning personnel who would perform maintenance on the  
2 station?

3 A Well, he'd know who was doing it. He knew me. He  
4 knows Marc Sobel. He knew when we did anything with the  
5 station because his office was all of 20 feet from mine  
6 inside my offices.

7 You were there. He had the closed in cubicle  
8 that's on our office floor space. He still has some of his  
9 stuff there.

10 JUDGE CHACHKIN: What I am curious, if you know,  
11 is this arrangement, radio system management and marketing,  
12 to what extent is this used by other licensees?

13 THE WITNESS: I understand, to the best of my  
14 knowledge, this is the standard boilerplate contract that  
15 the law firm of Brown and Schwaninger used with all their  
16 clients.

17 JUDGE CHACHKIN: When you say their clients, can  
18 you give me numbers, some kind of figure as to what we are  
19 talking about as clients, the number of clients that they  
20 used this with?

21 THE WITNESS: I once was accidentally sent a  
22 client list of Brown and Schwaninger, and I recall it  
23 probably had 200, maybe 300, clients on it.

24 How many of those used this contract? I spoke to  
25 some of their other clients that I've known over the years

1 and was aware that this contract was used with a number of  
2 clients.

3 I had done this after the Commission decimated Mr.  
4 Sobel over this contract, amongst other things, and they  
5 were understandably very closed mouthed as to whether they  
6 had this contract or not.

7 I understand there was a -- I was told that Brown  
8 and Schwaninger had basically done the automotive equivalent  
9 of a recall on all these contracts and rewrote them and even  
10 notified all their clients if they had one of these  
11 contracts it needed to be rewrote.

12 JUDGE CHACHKIN: So Brown and Schwaninger was the  
13 one who prepared this contract for you, the language?

14 THE WITNESS: One hundred percent prepared by  
15 them. They apparently used this with all their clients.

16 JUDGE CHACHKIN: Has the FCC ever said that this  
17 type of contract is improper to any of the licensees that  
18 you are aware of?

19 MR. KNOWLES-KELLETT: Your Honor, we argued the  
20 precedent separately before the Commission, but except for  
21 with Judge Frysiak, nobody looked at this contract.

22 There were other cases. There was a Motorola case  
23 where they looked at some contracts, and they gave what I  
24 would say was mediocre guidance about what was going on. We  
25 argued that --

1 JUDGE CHACHKIN: Who gave mediocre guidance?

2 MR. KNOWLES-KELLETT: The Commission, and I do not  
3 know whether it was at the Bureau or Commission level.

4 MR. SCHAUBLE: Your Honor, to clarify for a moment  
5 here, in the Sobel proceeding, the agreement in the Sobel  
6 proceeding which Judge Frysiak found unauthorized, that  
7 contract is very similar to this contract here.

8 JUDGE CHACHKIN: I am aware of that, but  
9 apparently hundreds of licensees, perhaps more, have used  
10 this particular agreement.

11 I want to know to what extent the Commission has  
12 been aware of it and whether they have indicated what  
13 agreement would be satisfactory and what arrangement would  
14 not be satisfactory. Has there been any guidance by the  
15 Commission in this area?

16 MR. KNOWLES-KELLETT: Your Honor, it is limited.  
17 We would be happy to provide you with a brief.

18 JUDGE CHACHKIN: Pardon?

19 MR. KNOWLES-KELLETT: There has been very limited  
20 guidance. I do not think we are ever going to agree to  
21 which side of the line this fell on.

22 JUDGE CHACHKIN: Has the Commission issued  
23 something in writing, a policy statement, or the Bureau  
24 issued a policy statement concerning agreements that cross  
25 the line?

1 MR. KNOWLES-KELLETT: The main case was the  
2 Motorola case. Is that your --

3 MR. KELLER: Yes, Your Honor. I was going to say,  
4 first of all, unlike certain agreements in broadcasting,  
5 these agreements are not required to be filed with the  
6 Commission.

7 In this service, until fairly recently there was  
8 not a lot of litigation or attention paid to this type of  
9 service, so this specific agreement, the specific form of  
10 this agreement, never came up to the Commission before the  
11 Marc Sobel case.

12 I would agree that the Motorola case is the most  
13 relevant precedent that the Commission previously addressed  
14 on these types of agreements, but I would dispute the  
15 characterization that the guidance was not very good.

16 I would argue that the guidance is very compelling  
17 in terms of what licensees have in the way of understanding  
18 what the Commission's policy was. All they had to go by was  
19 what the Commission had said in the Motorola decision. We  
20 can get you a copy of the Motorola decision.

21 JUDGE CHACHKIN: I would like to take a look at  
22 that decision.

23 MR. KNOWLES-KELLETT: As with Inter-Mountain  
24 Microwave, Your Honor.

25 JUDGE CHACHKIN: Well, Inter-Mountain does not

1 deal with this particular agreement. It deals generally  
2 with what constitutes control.

3 MR. KNOWLES-KELLETT: Right.

4 JUDGE CHACHKIN: That has nothing to do with this  
5 particular agreement, whether it is passed on or not.

6 MR. KNOWLES-KELLETT: Well, that is the  
7 Commission's standard with whether or not --

8 JUDGE CHACHKIN: Well, that is --

9 MR. KNOWLES-KELLETT: I understand, Your Honor,  
10 that you are not sure that that still applies.

11 I think that the matter is directly before the  
12 Commission right now, and I do not know how. It may be just  
13 appropriate to defer on anything with respect to this  
14 agreement until their decision in that case. I do not know.

15 JUDGE CHACHKIN: We will just have to wait and  
16 see. If the Commission has not acted, obviously I am going  
17 to put forth my viewpoint.

18 MR. KNOWLES-KELLETT: Okay.

19 JUDGE CHACHKIN: Let's proceed. Let's find out  
20 what the facts are, and then we will see where we go from  
21 there.

22 MR. SCHAUBLE: Thank you, Your Honor.

23 MR. KELLER: Before we go on, let me clarify  
24 something. Are we addressing whether this is a transfer of  
25 control?